

REMARKS

The Pending Claims

Claims 1, 16, 19, 23, 26, 27, 32, 35, 49, and 50 have been amended, and claims 24 and 25 have been canceled. Thus, claims 1-23 and 26-51 currently are pending.

Summary of the Office Action

The Office Action objects to claims 24 and 25 under 37 C.F.R. § 1.75 as being substantial duplicates of claims 20 and 15, respectively.

The Office Action rejects claims 16, 23, and 50 under 35 U.S.C § 112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention.

The Office Action rejects claims 1-51 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 6,492,001 (Rubin et al.) (hereinafter "the Rubin '001 patent") in view of U.S. Patent No. 5,672,222 (Eschenbach) (hereinafter "the Eschenbach '222 patent").

The Office Action also rejects claims 1-51 as allegedly unpatentable over U.S. Patent Application Publication No. 2004/0102113 A1 (DeMott et al.) (hereinafter "the DeMott '113 publication") in view of the Eschenbach '222 patent.

Discussion of the Claim Objections

The Office Action objects to claims 24 and 25 as being substantial duplicates of claims 20 and 15, respectively. As noted above, claims 24 and 25 have been canceled. Therefore, the claim objections have been rendered moot and should be withdrawn.

Discussion of the Section 112, Second Paragraph, Rejections

The Office Action rejects claims 16, 23, and 50 as allegedly indefinite due to a lack of proper antecedent basis for certain phrases appearing in the claims. Claims 16 and 50 have been amended to replace the phrase "synthetic polymeric film" with the phrase "polymeric film." Therefore, the elements set forth in each of these claims enjoy proper antecedent basis in the claims from which they depend.

Claim 23 has also been amended to replace the phrase "polyurethane film layer" with the phrase "polymeric film layer," as recited in claim 1. Therefore, each of

the elements set forth in claim 23 enjoys proper antecedent basis in claim 1, from which claim 23 depends.

In view of the foregoing, Applicants respectfully submit that the Section 112, second paragraph, rejections are now moot and should be withdrawn.

Discussion of the Rejections over the Rubin '001 Patent

The Office Action rejects the pending claims as allegedly obvious over the Rubin '001 patent in view of the Eschenbach '222 patent. Applicants respectfully traverse this rejection.

As acknowledged in the Office Action, neither the Rubin '001 patent nor the Eschenbach '222 patent teach or suggest a textile article comprising an adhesive web disposed between a nonwoven needled layer and a polymeric film layer. Therefore, Applicants respectfully submit that pending claims 1-23, 26, and 35-51, which recite an adhesive web disposed between a nonwoven needled layer and a polymeric film layer, are patentable over the cited references. Accordingly, the Section 103 rejection of claims 1-23, 26, and 35-51 should be withdrawn.

With respect to claims 27-34, the Office Action acknowledges that the Rubin '001 patent and the Eschenbach '222 patent fail to teach or suggest a textile comprising a polyurethane film layer, wherein the polyurethane film layer comprises an aromatic polyether. Notwithstanding this acknowledgement, the Office Action asserts that "polyether polyurethanes" are well known in the art and, therefore, concludes that it would have been obvious for one of ordinary skill in the art to utilize an aromatic polyether polyurethane in the fabric described in the Rubin '001 patent. However, the mere fact that such polyurethanes may have been known at the time that the presently claimed subject matter was invented is not, in and of itself, sufficient to establish that the claimed subject matter would have been obvious to one of ordinary skill in the art. Rather, the Office Action must identify some teaching within the cited references or the knowledge generally available to those of ordinary skill in the art at the time of invention which would have motivated the ordinary artisan to modify the fabric disclosed in the Rubin '001 patent in such a way as to arrive at the invention defined by the pending claims. Otherwise, the Office Action's bald assertion amounts to nothing more than an "obvious to try" standard, which has been expressly rejected by both the Board and the Federal Circuit.

Furthermore, the Office Action's reliance on *In re Leshin* in support of the rejection is misplaced. In particular, the Office Action has not submitted any evidence tending to demonstrate that aromatic polyether polyurethanes were recognized in the art as being suitable for use as a polymeric film backing for textile materials. Therefore, the principle relied upon in *In re Leshin* to find that the claimed subject matter was obvious, namely that the art recognized the suitability of the material for the particular purpose, has not been met in the present case. Therefore, Applicants respectfully submit that the Office Action fails to identify any teaching or suggestion which would have motivated one of ordinary skill in the art, at the time of invention, to modify the fabric described in the cited references in such a way as to arrive at the invention defined by the pending claims. Therefore, claims 27-34 cannot properly be considered *prima facie* obvious over the cited references, and the Section 103 rejection of such claims should be withdrawn.

Applicants also respectfully submit that the Office Action's numerous invocations of Official Notice do not constitute the "judicious" application mandated by M.P.E.P. § 2144.03. While Applicants do not contest the fact that certain individual elements (e.g., polypropylene fibers, polyester fibers, acrylic latexes, and flame retardants) recited in the pending claims were known prior to the invention of the presently claimed subject matter, Applicants respectfully submit that the mere fact that such individual elements were known in the art at the time of invention does not constitute sufficient evidence that the claimed combinations would have been obvious to those of ordinary skill in the art. Indeed, the Office Action repeatedly takes Official Notice of the fact that such individual elements were known in the prior art, but fails to provide any evidence tending to demonstrate that those elements were recognized in the art as being suitable for use in nonwoven textiles, such as those recited in the pending claims. Therefore, Applicants respectfully submit that the Office Action's use of Official Notice is improper and that the Office Action has failed to identify any teaching within the cited references or the knowledge generally available to those of ordinary skill in the art which would have motivated the ordinary artisan to modify the fabric disclosed in the Rubin '001 patent in such a way as to arrive at the invention defined by the pending claims.

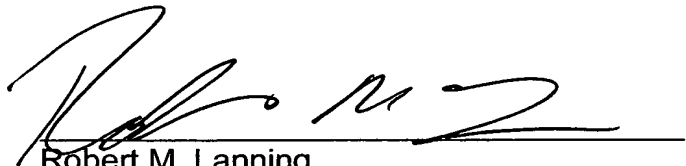
In view of the foregoing, Applicants submit that the invention defined by the pending claims is not *prima facie* obvious over the cited references. Therefore, the Section 103 rejections of the pending claims should be withdrawn.

Discussion of the Rejections over the DeMott '113 Publication

As noted above, the Office Action rejects claims 1-51 as allegedly obvious over the DeMott '113 publication in view of the Eschenbach '222 patent. However, the DeMott '113 publication, which only qualifies as prior art to the present application under 35 U.S.C. § 102(e), and the subject matter claimed in the present application were, at the time the present invention was made, owned by the same entity or subject to an obligation of assignment to the same entity, namely Milliken & Company. Therefore, the DeMott '113 publication cannot be used to reject the invention defined by the pending claims under 35 U.S.C. 103(a) (see, 35 U.S.C. 103(c) and M.P.E.P. §§ 706.02(l)(1) and (2)). Accordingly, Applicants respectfully request that the obviousness rejections over the DeMott '113 publication be withdrawn.

Conclusion

In view of the foregoing, the application is considered in proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone interview would expedite prosecution of the instant application, the Examiner is invited to call the undersigned.



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